

REMARKS/ARGUMENTS

The final Office Action of November 25, 2008, and the Advisory Action mailed February 19, 2009 have been carefully reviewed and this paper is responsive thereto. Claims 23, 25, 27-31, 33-35, 37-43 and 45-49 were pending in the application. The Amendment filed January 26, 2009, was entered, as noted in the Advisory Action. In the Advisory Action, claims 47 and 48 were objected to, and claim 49 remained rejected. By this response, claims 47, 48 and 49 have been amended. Applicants appreciate the statement in the Advisory Action that claims 23, 25, 27-31, 33-35, and 37-46 are allowed. No new matter has been introduced into the application. As explained in more detail below, Applicants submit that all claims are in condition for allowance and respectfully request such action.

Claim Amendments

Claims 47, 48 and 49 have been amended. Claim 47 has been amended to include the feature of “in which the ion exchange mechanism comprises a filter to adjust fluid ion concentration.” This amendment is supported at least by paragraphs [0017] and [0018] of the application as originally filed.

Claim 48 has been amended to include the feature of “in which the ion exchange mechanism comprises a chemical for treating fluid to adjust ion concentration.” This amendment is supported at least by paragraphs [0017] and [0018] of the application as originally filed.

Claim 49 has been amended to include the feature of “means for monitoring electrical conductivity of brain fluid proximate to the region; and means for adjusting the delivery of the modulated ion-content fluid into the region of the patient’s brain, based on the monitored electrical conductivity of the brain fluid.” This amendment is supported at least by paragraph [0023] of the application as originally filed.

Claim Rejections - 35 U.S.C. § 112

Claims 47 and 48 were rejected under 35 U.S.C. § 112, as it was deemed that paragraph [0018] of the disclosure as originally filed did not support means for filtering or chemical means

for treating fluid. These claims have been amended to delete the means-plus-function language, and claim, respectively “a filter” and “a chemical,” rendering the rejection moot.

Claim Rejections - 35 U.S.C. § 103(a)

Claim 49 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,445,500 (“Osterholm”) in view of alleged applicant admitted prior art (AAPA) and further in view of U.S. Patent No. 6,402,941 to Lucido et al. (“Lucido”). By this response, claim 49 has been amended to recite the following:

49. (Currently Amended) Apparatus for treating epilepsy and other neurological disorders of the brain comprising:

means for modifying ion concentrations of a fluid to render modulated ion-content fluid using a predetermined process;

means for substantially continuously pumping the modulated ion-content fluid into a localized region of the patient's brain;

means for monitoring electrical conductivity of brain fluid proximate to the region; and

means for adjusting the delivery of the modulated ion-content fluid into the region of the patient's brain, based on the monitored electrical conductivity of the brain fluid, where the ion-content fluid is pumped to the patient's brain.

The Office Action mailed November 25, 2008, stated on page 8 that the “prior art of record does not teach or otherwise render obvious at the time the invention was made a fluid pumping mechanism with means for adjusting the delivery of the modulated ion-content fluid based upon the measured electrical conductivity of the brain fluid.” By this response, claim 49 was amended to include the feature of “means for monitoring electrical conductivity of brain fluid proximate to the region; and means for adjusting the delivery of the modulated ion-content fluid into the region of the patient's brain, based on the monitored electrical conductivity of the brain fluid.” The amendment to claim 49 thus incorporates the concepts indicated to be

allowable over the prior art of record. None of Osterholm, AAPA or Lucido, either alone or in combination teach or suggest the feature of "means for monitoring electrical conductivity of brain fluid proximate to the region; and means for adjusting the delivery of the modulated ion-content fluid into the region of the patient's brain, based on the monitored electrical conductivity of the brain fluid." Accordingly, amended claim 49 is patentable over Osterholm in view of AAPA and Lucido. Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection of claim 49.


Conclusion

It is respectfully submitted that the pending claims are in condition for allowance. The Examiner is invited to contact the undersigned at the telephone number provided below should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,
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